



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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**CM-4260-C-2026 in/and
RSA-1656-2025 (O&M)
Date of decision: 06.04.2026**

Parveen Kumar

...Appellant(s)

Vs.

Nishu Bindal and another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Vikram Singh, Advocate
for the applicant/appellant.

NIDHI GUPTA, J.

CM-4260-C-2026

This is an application under Section 151 CPC for preponing the date of hearing from 09.10.2026 to some early date of hearing.

2. Heard.

3. In view of the reasons mentioned in the application, which is duly supported by an affidavit of the applicant/appellant, instant application is allowed, and the main case is taken up on Board today itself.

CM-5689-C-2025

Prayer in this application filed under Section 5 of the Limitation Act is for condonation of delay of 8 days in filing the accompanying appeal.

2. Heard.



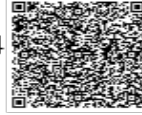
3. For the reasons mentioned in the application which is duly supported by an affidavit of the applicant/appellant, the same is allowed and delay of 8 days in filing the appeal is condoned.

RSA-1656-2025 (O&M)

Present Second Appeal has been filed by the defendant; whereby the suit filed by the plaintiffs/respondents for specific performance alongwith consequential relief of permanent injunction and temporary injunction, has been decreed by both the District Courts for specific performance.

2. Brief facts of the case are that the plaintiffs/respondents had filed a *“Civil Suit for specific performance of agreement to sell dated 08.03.2019 (Annexure P-1) and subsequent understanding/subsequent writings dated 08.07.2019 (Annexure P-2) executed between the defendant in favour of plaintiffs, in the interest of justice; AND Suit for permanent injunction and temporary injunction restraining the defendant from transferring the Dwelling Unit 5921, Duplex Phase-III, Modern Housing Complex, Manimajra, UT Chandigarh in favour of any other person except the plaintiffs and further directing the defendant to handover the physical peaceful possession of above said D.U to the plaintiffs, in accordance with the terms and conditions of the agreement to sell dated 08.03.2019 (Annexure P-1) in the interest of justice.”*

3. It was the pleaded case of the plaintiffs before the learned District Courts that defendant had entered into Agreement to Sell dated



08.03.2019 to sell the suit property to the plaintiffs for total sale consideration of Rs.1,72,50,000/-. Defendant had received Rs.30 lacs by way of earnest money. Target date for registration of Sale Deed was fixed for 15.07.2019. It was averred that as per Clause 4 of the Agreement, defendant was required to clear bank loan existing upon the suit property before 18.03.2019. As per Clause 12 of the Agreement to Sell, defendant was also required to clear all outstanding dues such as electricity bill and water bill/charges, maintenance et cetera. Vide Writing dated 08.07.2019, defendant had further undertaken to de-mortgage the suit dwelling unit on or before 25.07.2019; and target date stood extended to 20.08.2019. On 20.08.2019, defendant had failed to turn up before the Sub Registrar. It was averred that plaintiffs had already made payment of Rs.36 lacs to the defendant; and they were also having remaining balance sale consideration of Rs.1, 36,50,000/- as detailed in the plaint. It was alleged that defendant is trying to sell the suit property to a third party. With these plaintiffs, present suit was filed on 29.08.2019.

4. Upon appraisal of the pleadings and the evidence led by the parties, the learned Civil Judge (Junior Division), Chandigarh had decreed suit of the plaintiffs vide judgment and decree dated 28.03.2024 as follows:

“37. As a sequel to my discussion and findings on the above issues, this court is of the considered view that the suit of plaintiffs succeeds and decreed to the effect that plaintiffs are held entitled to get the decree for specific performance of

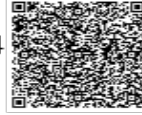


agreement to sell and subsequent writing executed between the parties. Accordingly, defendant is directed to get execute and register the sale deed in favour of plaintiffs in accordance with the terms of the agreement to sell dated 08.03.2019 within a period of two months from the date of this judgment and decree. Further, after execution of sale deed, the defendant is further directed to handover the physical possession of the suit property to plaintiffs failing which the plaintiffs would be at liberty to adopt the legal recourse. Defendant is restrained from transferring the suit property in favour of any other person except the plaintiffs. Decree sheet be prepared. File be consigned to record room after due compliance.”

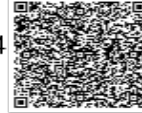
5. The Civil Appeal filed by the appellant/defendant was dismissed by Additional District Judge, Chandigarh vide judgment and decree dated 02.12.2024. Hence, present second appeal by the defendant.

6. It is *inter alia* submitted by learned counsel for the appellant that learned District Courts were in patent error in non-suiting the appellant as they failed to appreciate that plaintiff No.2 did not step into witness box. Neither he himself stepped into the witness box, nor did he give any power of attorney to lead evidence. It is submitted that therefore, the plaintiffs failed miserably to prove their case. Accordingly, suit could not have been decreed.

7. It is further submitted that the law is no more res integra on what the Ld. Courts below has to see in the suit for specific performance.



The test is "Readiness and Willingness" of the party seeking a decree. In the present case there was neither Readiness nor the Willingness of the respondents/plaintiffs. The plaintiffs were neither financially ready nor was their conduct above board so as to prove their Willingness. It is submitted that the original date for completion of the deal was 15.07.2019 when the agreement to sell was entered into. But the plaintiffs did not have any funds to get the sale deed registered. As such, they approached the appellant to get the date of registration of sale deed extended upto to 20.08.2019 which was accepted by the defendant; and vide the addendum dated 08.07.2019 it was extended. The Ld. Courts below did not test the "Readiness and Willingness" of the respondents/plaintiffs gave them a long rope in the form of liberal concession by applying the legal principles established by the Hon'ble Apex Court in a manner which suited the plaintiffs. It is also a settled law that even in the absence of a specific plea by the opposite party i.e. the appellant/defendant herein, it is the mandate of the statute that the plaintiff has to comply with section 16 (c) of Specific Relief Act and when there is non-compliance with the statutory mandate, the court is not bound to grant specific performance and is left with no alternative but to dismiss the suit. It is also established law that the "Readiness to perform" must be established throughout the relevant points of time. Therefore, keeping in view the above-mentioned facts the impugned judgments and decrees passed by the Ld. Courts below are liable to be set aside.



8. It is submitted that GPA of the plaintiffs had not appeared as witness yet, learned District Courts have taken Agreement to Sell dated 08.03.2019 to be proved in accordance with law. Moreover, plaintiffs have received legal notice dated 16.08.2019 served upon them by the appellant for executing of Sale Deed and payment of interest. No reply was received by the appellant to the said legal notice served by him upon the plaintiffs. Thus, readiness and willingness of the appellant to perform the contract was evident. However, learned District Courts have held that plaintiffs have succeeded in proving their readiness and willingness. It is submitted that the said findings on the face of it, are unsustainable.

9. It is further submitted that even no issue was framed by the learned District Courts with regard to as to whether there was readiness and willingness of the plaintiffs to perform their part of Agreement. Thus, the findings have been given without evaluating the conduct of the plaintiffs, without framing of issue with regard to readiness and willingness. Thus, suit for specific performance cannot be decided let alone decreed. In the absence of an issue with regard to readiness and willingness, no finding to this effect could have been given by both the District Courts. Thus, findings of the learned District Courts are based on assumptions and presumptions and based upon non-appreciation of evidence at hand.

10. Ld. Counsel for the appellant for the submits that findings of the learned District Courts that appellant had not obtained the requisite



NOC or even the de-mortgage the document and thus appellant did not perform his part of contract, is factually incorrect as the appellant had duly obtained NOC on 29.03.2019 which was forwarded by the financing bank to the Chandigarh Housing Board before time. Thus, findings to the contrary are incorrect.

11. Learned counsel for the appellant further submits that the Id. Courts below did not appreciate the fact while the plaintiffs got their so called presence marked, as a token of their presence in the shape of an affidavit attested by a Notary/Oath Commissioner. However, the same carries no evidentiary value because it cannot be tested or corroborated or is not even required under the law but is made by a party and accepted by the courts which is totally beyond comprehension as such affidavits can be prepared at home without even being present at the Registration Office because there is no provision in the Registrar's office for marking the presence of anybody and there is no official record maintained by the Registrar's office, therefore, this fact can also be negated being based on assumptions and carries no weight in the eyes of law.

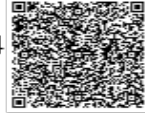
12. It is accordingly prayed that the present Appeal be allowed; and the impugned judgments and decrees of Id. District Courts be set aside.

13. No other argument is raised on behalf of learned counsel for the appellant. I have heard learned counsel and perused the case file in detail. I find no merit in the submissions advanced on behalf of appellant.



14. Perusal of the record of the case shows that defendant has admitted that he is absolute owner of the suit property. Defendant has also admitted the execution of the Agreement to Sell dated 08.03.2019 Ex.PW9/2 in favour of the plaintiffs; as also the Writing dated 8.7.2019. DW1 Ms. Aradhana wife of the defendant, has identified signatures of the appellant/defendant on the Agreement to Sell. Even defendant himself while appearing as DW2 has admitted his signatures on the Agreement to Sell. DW1 Ms. Aradhana has also admitted her joint account statement Ex.P1/DW1. She has also admitted the entries and receipt of earnest amount of Rs.36 lacs as depicted in the said account statement Ex.P1/DW1. DW2 defendant has also admitted his signatures on Ex.PW9/1 to Ex.PW9/4 which are Receipts for amount of Rs.36 lacs. Thus, in view of the admissions on part of the defendant and his witnesses, execution of the Agreement in question stood proved; and payment of earnest amount of Rs.36 lacs was also proved.

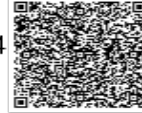
15. As regards the issue of readiness and willingness, plaintiffs have succeeded in proving their readiness and willingness to perform their part of contract. This is evident from the fact that plaintiffs had issued legal notice dated 13.08.2019 Ex.P4 which was served upon the defendant. Further, plaintiffs had proved their financial capacity by proving that they had borrowed home loan vide approval letter dated 06.07.2019 issued by State Bank of India Ex.PW3/1. Plaintiffs had also produced letter Ex.PW3/5 whereby loan was sanctioned to the plaintiffs.



The said sanction letter Ex.PW3/5 was duly proved by examining SBI Official PW6 Devender Kumar. Further, financial capacity of the plaintiffs was duly established from the Bank Draft dated 14.08.2019 Ex.PW3/1; loan account statement Ex.PW3/2. Plaintiff had also shown availability of funds before 20.08.2019 in their different accounts in the form of FDs as evident from their account statements Ex.PW3/1, Ex.PW2/2, Ex.PW2/4, Ex.P2/PW7 and Ex.PW6/2. Plaintiffs have also proved that they had deposited TDS under Section 194 IA of the Income Tax Act. Moreover, plaintiffs had proved their presence before the Sub Registrar on target date of 20.08.2019 vide their Affidavit of Attendance Ex.PW6/3.

16. From the above facts, it is clear that plaintiffs had succeeded in proving their readiness and willingness to perform their part of contract. The said voluminous evidence adduced by the plaintiffs cannot be discarded on the lame argument of the appellant that no issue in respect of readiness and willingness was framed by the learned Trial Court. Needless to say, nothing forbade the appellant to prove his readiness and willingness to perform his part of contract.

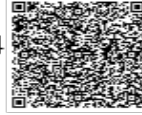
17. However, perusal of the record reveals that it was the defendant who dismally failed to perform his part of contract. It is not disputed by learned counsel for the appellant that as per Clause 4 of the Agreement to Sell, appellant was required to obtain NOC; and as per Writing dated 08.07.2019, appellant was also required to get the demortgage the document. However, there are concurrent findings of fact



that appellant field to fulfil both of the above said conditions. Moreover, on the target date of 20.08.2019, defendant did not appear before the office of Sub Registrar UT, Chandigarh. This fact has been admitted by the appellant during his cross-examination.

18. Contention of learned counsel for the appellant that a legal notice dated 16.08.2019 had been served by the appellant upon the plaintiffs, remains utterly unsubstantiated. There is no evidence or exhibited document to this effect which has been brought to the notice of this Court. Further, when the appellant appeared in the witness box as DW1 he had admitted that deal had been finalized in the office of property dealer Naresh Gulati as was pleaded by the plaintiffs. Defendant had also admitted his signatures on the Agreement to Sell dated 08.03.2019 Ex.PW9/2; and Writing Ex.PW9/4. Regarding extension of time for execution and registration of Sale Deed, appellant had also admitted his signatures on the Receipts Ex.PW9/1 to Ex.PW9/4 for the part payment of sale consideration.

19. In his Affidavit of evidence, Ex.DW2/D1/A appellant has taken a stand that plaintiffs have fraudulently obtained his signatures on the Agreement dated 08.03.2019. However, not only is this allegation of the appellant beyond pleadings, even no evidence was led by the appellant in this regard. Even otherwise, appellant never appeared before any authority to make any complaint against the plaintiffs in this regard.



20. Besides the other evidence, plaintiffs had also examined PW1 Nishu Bindal/plaintiff No.1; PW9 Naresh Gulati; and attesting witness Terwinder Kumar to prove the execution of agreement. Thus, contention of the appellant that plaintiff No.2 had failed to step into witness box is rejected, as the above uncontroverted evidence led by the plaintiffs. Non-appearance of only one plaintiff, would not be any ground to decline the relief to the plaintiffs.

21. Relevant findings of the First Appellate Court are contained in paras 18, 19 and 20 of judgment dated 02.12.2024, which read as under: -

“18. The burden to prove the execution of agreement of sale Ex. PW9/2 and writing Ex.PW9/4 was on the plaintiffs. In order to prove the execution of the same, the plaintiff Nishu Bindal besides examining himself as PW1, has also examined PW9 Naresh Gulati, Property Dealer, in whose office the deal was finalized. The plaintiffs have also examined PW10 Tervinder Kumar, the attesting witness of the agreement. The defendant Parveen Kumar when stepped in the witness box as DW2, has deposed that the plaintiff Nishu Bindal in conspiracy with property dealer and some other persons got his signatures on a forged and fabricated agreement of sale without paying any amount. Thereafter, he started harassing him in one way or the other and insisted him to pro-vide more documents, which were not necessary for registration of the suit property. However, no such stand has been taken by him in his writ-ten statement. The plaintiffs have pleaded about the execution of the agreement of sale in para No.2 of the plaint, which is reproduced here-in-under for reference:-



"2. That as the plaintiffs were in dire need of accommodation in Duplex, Manimajra, Chandigarh, therefore, they approached the Mr. Naresh Gulati (Property Dealer), who is running the real estate business under the name and style "M/s Shiv Properties" having its office at Booth No.42, Main Market, Modern Hous-ing Complex, Manimajra, Chandigarh. Mr. Naresh Gulati told the plaintiffs that the defendant is interested to sell off his dwelling unit i.e. No: 5921, Duplex, Phase-III, Modern Housing Complex, Manimajra, U.T., Chandigarh. Accordingly, a meet-ing was organized by the above-named property dealer in his office and the deal of the above-said D.U. was finalized for total consideration of Rs. 1,72,50,000/- (Rupees One Crore Seventy Two Lakhs and Fifty Thousand only). The agreement to sell was executed into between the parties on 08.03.2019 and the plaintiff paid Rs. 30,00,000/- (Rupees Thirty Lakhs) as earnest money to the defendant. The date of registration of sale deed was fixed as 15.07.2019. The copy of the agreement to sell dated 8.3.2019 is attached herewith as Annexure P-1".

19. In reply of corresponding para, the defendant in his written statement has pleaded as follows:-

"That the contents of para No.2 conceal more than they re-veal. The plaintiffs be put to strict proof to prove their averments."

20. A bare perusal of the aforesaid abstracts reveal that in para No.2, the plaintiffs have pleaded the execution of agreement of sale dated 8.3.2019 & writing dated 8.7.2019 and passing of consideration, however, in the reply of corresponding para, the defendant has not specifically denied the execution of agreement, writing, receipt etc. When a fact is not specifically denied in a written statement, it is deemed to be admitted. The defendant when appeared in witness box, he has admitted in his cross-examination that the deal

was finalized in the office of property dealer Naresh Gulati as pleaded by the plaintiffs. He has further admitted his signatures on agreement of sale dated 8.3.2019 (Ex.PW9/2), writing dated 8.7.2019 (Ex.PW9/4) regarding extension of time of execution & registration of sale deed and receipts (Ex.PW9/1 & Ex.PW9/3) of part payment to the tune of 36 lac. Though in his affi-davit Ex.DW2/D1/A, he has taken a stand that the plaintiffs fraudulently took his signatures on agreement of sale without paying any considera-tion, however, this stand of the defendant Parveen Kumar is beyond his pleadings. Even otherwise, he never appeared before any authority to make any complaint against the plaintiffs in this regard.”

22. Learned counsel for the appellant is unable to controvert or dispute the above said facts and findings.
23. In view of the above, no ground is made out to interfere in the impugned judgment and decrees of the learned District Courts. Hence, present Second Appeal stands **dismissed**.
24. Pending applications, if any, stand disposed of.

06.04.2026
Divyanshi

(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No